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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION


TRADING TECHNOLOGIES)	
INTERNATIONAL, INC.,)	
)	
Plaintiff,)	
)	
vs.)	No. 04 C 5312
)	
eSPEED, INC., et al.,)	
)	
Defendants.)	

MEMORANDUM OPINION AND ORDER

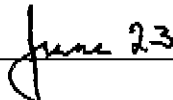
Charles Mauro is a consultant to Trading Technologies, perhaps an expert who will testify in further proceedings, and also, to some extent, a fact witness regarding, perhaps among other things, a development by Wit Capital. Some of the parties do not want Mr. Mauro to attend the deposition of the Buists, father and son, or review their depositions. Trading Technologies resists that motion.

The legal context is not really in dispute. The court can close down the deposition and say that a person cannot attend, but it should have good cause for so ordering. Particularly in this circuit, discovery is not a private matter. I agree that as a general position, pretrial discovery must take place in public unless compelling reasons exist for denying public access to the proceedings. Accordingly, it is a rare occurrence when someone is excluded. Indeed, the parties come up with exclusion cases in this circuit that date back to 1971 and 1980, but not more recently. Here the basis for the exclusion is that the Buists will probably testify about prior art, including the Wit Capital development, where Walter Buist was a colleague of Mauro's at some time. The movants believe that his attending those depositions, or reviewing

them, could taint his subsequent testimony and they raise questions about his credibility in view of his repeated denial of having any records and then coming up with a great number of records at a later date. But his deposition has already been taken, so he cannot change his testimony much. What it gets down to is that I am not persuaded that there is a sufficient good cause to enter an order which causes one person to be excluded from discovery in this case. Therefore, I deny the motions.



JAMES B. MORAN
Senior Judge, U. S. District Court


_____, 2006.